(25,772)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 942.

THE NEW YORK CENTRAL RAILROAD COMPANY, SUCCESSOR OF THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ANNA C. PORTER, FOR HERSELF AND HER FOUR MINOR CHILDREN, MARGARET PORTER, PARK PORTER, ADELE PORTER, AND CLARISSE PORTER, ET AL.

IN ERROR TO THE SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT OF THE STATE OF NEW YORK.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 27, 1917.

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a Supreme Court, Appellate Division, Third Judicial Department.

In the Matter of LEWIS M. PORTER, Deceased; ANNA C. PORTER, Claimant, Respondent; The New York Central and Hudson River Railroad Company, Employer, Appellant.

Papers on Appeal from Workmen's Compensation Commission.

Visscher, Whalen & Austin, Attorneys for Appellant, 19 Tweddle Building, Albany, N. Y.
Hon. Egburt E. Woodbury, Attorney General, Capitol, Albany, N. Y.
Hon. Jeremiah F. Connor, Counsel to Compensation Commission, 1 Madison Avenue, New York City.
A. T. Wilkinson, Attorney for Respondent, Camden, N. Y.

1 Supreme Court, Appellate Division, Third Judicial Department.

Before State Workmen's Compensation Commission, Respondent.

Claim No. 60448.

In the Matter of LEWIS M. PORTER, Deceased; ANNA C. PORTER, Claimant, Respondent; The New York Central and Hudson River Railroad Company, Employer, Appellant.

Statement Under Rule 41.

1914.
Dec. 17. Lewis M. Porter died.
" 26. Notice of death served by claimant.
1915.
Jan. 16. Supplemental notice of death served by claimant.
Feb. 10. Award made by commission.
" 25. Report of death filed by employer.
" 25. Affidavits and objections to award filed by employer.
Apr. 30. Case reopened, additional papers filed and award confirmed.
" " Notice of exceptions and notice of appeal served.
There has been no change in parties named as above.

2 *Claimant's First Notice of Death.*

To the State Workmen's Compensation Commission and to the New York Central & Hudson River Railroad Company:

SIRS: Please take notice that on behalf of myself as widow, and on behalf of my four children all under the age of eighteen years, I claim compensation under the Workmen's Compensation Law of the State of New York, for the death of Lewis M. Porter, at Camden, Oneida County, N. Y., on the 17th day of December, 1914. Said

Lewis M. Porter was employed by the New York Central & Hudson River Railroad Company at Camden, N. Y., as a section hand upon the Ontario Division of its railroad under Foreman Fred Hoffman. His post office address was Camden, N. Y. On the 17th day of December, 1914, he was at work for said railroad company shoveling snow from between the track and a platform near the point where the tracks of said railroad company cross Mexico Street in said village of Camden, and while so employed was struck by a north bound passenger train, known as No. 49, at about 10:45 A. M. and instantly killed.

Said Lewis M. Porter had been employed by said railroad company for two weeks and his wages were $1.50 per day. He left surviving him, his widow, myself, and four children, to wit: Margaret, aged 13, Dec. 24, 1914; Park, aged 11, March 4, 1914; Adell, aged 9, Jan. 31, 1914, and Clarissa, aged 7, Aug. 30, 1914.

Dated, Camden, N. Y., December 26th, 1914.

(Signed) ANNA C. PORTER.

3 *Notice of Death to Commission.*

Form C-73.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y. New York Office: 1 Madison Avenue.

Bureau of Claims.

Claim No. 60448.

Case of Lewis M. Porter.

(By dependents or on their behalf.)

Instructions.

In case of death fill this out and mail at once to the Commission.

State Workmen's Compensation Commission, 1 Madison Avenue, New York, N. Y.:

Lewis M. Porter injured on the 17th day of December, 1914, while in the employ of N. Y. Central & Hudson River R. R. Co. died as a result of said injuries on the 17th day of December, 1914, at —.

Street and number: Camden, Oneida County.

Has notice been served on employer? Yes. If so, how? (by delivery or registered mail)? Both. What date? Dec. 26th, 1914 and again on Jan. 16th, 1915.

Remarks: A notice stating in detail the facts relating to this case was mailed to you by registered mail on Dec. 26th, 1914.

Sign here: ANNA C. PORTER.

Dated at Camden, N. Y., this 16th day of Jan., 1915.
Relationship to deceased: Wife.
Camden, New York, Address.

4 *Claim for Compensation.*

Form C 79.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y. New York Office: 1 Madison Avenue.

Bureau of Claims.

Claim No. 60448.

Case of Lewis M. Porter.

Form of Claim for Compensation by Widow in Death Case.

I hereby make claim for compensation under Section 16 of Chapter 67 of the consolidated laws. My claim arises out of the death of Lewis M. Porter who died on 17th day of December 1914, as a result of injury sustained on the 17th day of December 1914, in the employ of N. Y. Central & Hudson River Railroad Co. New York.

I was the wife of the deceased Lewis M. Porter and I was dependent upon the deceased for support at the time of his death.

I have the following children who were also dependent upon said deceased for support:

Names.	Date of birth.
Margaret Porter	Dec. 24, 1901
Park Porter	March 5th, 1903
Adele Porter	Jan. 31st, 1905
Clarissa Porter	Aug. 30th, 1907

I was born Dec. 11th, 1875.

I was married to the deceased on the 19th day of February 1901 at Camden, Oneida County, New York. To the best of my knowledge the deceased was earning at the time of the injury wages at the rate of $1.53 per day.

I hereby agree to accept the compensation awarded by the State Workmen's Compensation Commission in lieu of any other
5 right or cause of action which I may have against any person, firm, or corporation, in consequence of such accident; and,

in consideration of such compensation, if any, when awarded, I hereby assign and set over unto the State Workmen's Compensation Commission, for the benefit of the State Insurance Fund, if compensation be payable therefrom and otherwise to the person or association or corporation liable for the payment of such compensation, all my right, title, and interest, if any, in such cause of action for such injury, loss, or damage against any person, firm, or corporation.

ANNA C. PORTER,
Camden, New York.

Dated this 16th day of January 1915.

Affidavit.

STATE OF NEW YORK,
County of Oneida, ss:

On this 16th day of January, A. D., 1915, personally appeared before me the above named Anna C. Porter, and made oath that the answers by her above named and subscribed are true.

[SEAL.] ALBERT T. WILKINSON,
Notary Public.

Address Camden, New York.

6 *Employer's Proof of Death.*

Form C-19.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y. New York Office: 1 Madison Avenue.

Bureau of Claims.

Claim No. 60448.

Case of Lewis M. Porter.

Proof of Death: Affidavit of Employer.

January 21, 1915.

Name: Fred J. Hoffman.
Address: Camden, New York.

In the Matter of the Death of Lewis M. Porter, late of Camden, N. Y., who was injured about 10:45 A. M. on the 17th day of December, 1914.

What is your name in full? Fred J. Hoffman.
What is your post-office address? Camden, Oneida County, N. Y.

What is the name of the firm or corporation with which you are connected? N. Y. Central & H. R. R. R. Co.

What is the kind and character of the business conducted? Railroad.

What is your official title? Section Foreman.

How long have you been personally acquainted with the deceased? Five years.

How long was he in your employ? 16 days.

In what capacity was he in your employ? Section laborer.

What were his average daily wages? $1.53.

Do you know, as a matter of personal knowledge, that he was accidentally or otherwise injured? Yes.

What are the full particulars as to how, when and where he was so injured? He was shoveling snow from a space between the track and a milk platform at the south side of the Mexico Street
7 crossing of the Ontario Division of said railroad in the village of Camden, N. Y. and was struck by passenger train No. 49 north bound.

What are the names, ages and residence addresses of his widow and children? Anna C. Porter widow, Margaret Porter, Park Porter, Adele Porter and Clarissa Porter children all of Camden, N. Y.

On what date did he die? December 17th, 1914. What are the names and addresses of all the persons who were present at the time of the injury? I cannot give them.

Remarks.

.....
.....
.....
.....
.....

Dated at Camden, N. Y., this 21st day of January 1915.

(Signature) F. J. HOFFMAN.

Witness to signature:
ISABELLE CRAIG.

P. O. Address of witness: Camden, N. Y.

STATE OF NEW YORK,
County of Oneida, ss:

On this 21st day of January, 1915, personally appeared before the undersigned, a Notary Public in and for the said county and state, the above named Fred J. Hoffman, to me well known, and to whom I have read the foregoing questions and answers, and all the matter above stated, and who, after being duly advised in the premises, subscribed his (her) name hereto in my presence, and made oath that

the foregoing statements, and each and all of them are full and true, and are made without reservation or concealment.

[SEAL.] ALBERT T. WILKINSON.
Post-office Address, Camden, Oneida County, N. Y.

8 *Undertaker's Proof of Death.*

Form C-21.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y. New York Office: 1 Madison Avenue.

Bureau of Claims.

Claim No. 60448.

Case of Lewis M. Porter.

Proof of Death—By Undertaker.

STATE OF NEW YORK,
County of Oneida, ss:

Bert A. Sanborn being duly sworn, says, that he is a duly licensed undertaker of Camden, N. Y., at Street Number —— ——; that as such he was required on the 17th day of December, 1914, to prepare the dead body of Lewis M. Porter for burial; that he placed a coffin, containing the said body, in a Vault in Forest Park cemetery; to —— —— (Relative, friend, etc.) at ——: that he was directed to conduct such burial by Anna C. Porter who authorized the following:

Casket	$65.00
Embalming	10.00
Hearse	5.00
2 Carriages	6.00
Cash to minister	3.00
Total	$89.00

That he was informed said bill would be paid by —— ——; that no part of said bill of expenses so authorized for said burial has been paid, except, $— by —— ——; $— by —— ——; $— by
9 —— ——.

(Signed) BERT A. SANBORN.

Subscribed and sworn to before me this 16th day of January, A. D. 1915.

ALBERT T. WILKINSON,
Notary Public.

Certificate of person who made funeral arrangements will be required below unless itemized bill of undertaker endorsed "correct" by such person, is attached.

Certificate of Person Authorizing Burial.

I hereby certify that I have read the foregoing affidavit of Bert A. Sanborn, undertaker; that I authorized the items of expense therein amounting to $89.00, as the funeral expense of deceased workman.
(Signed) ANNA C. PORTER.

(NOTE.)—The entire amount allowed for burial under the Workmen's Compensation Act cannot exceed $100.).

10 *Clergyman's Proof of Death.*

Form C-22.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y. New York Office: 1 Madison Avenue.

Bureau of Claims.

Claim No. 60448.

Case of Lewis M. Porter.

Proof of Death—By Clergyman.

Concerning the Death of Lewis M. Porter, I, Louis G. Colson, 52 years of age, am now and for one year have been in charge of the First Presbyterian Church of Camden, N. Y.; my address is 66 Second Street, Camden, N. Y.; on the 19th day of December, 1914, I officiated as Clergyman at the funeral and interment of Lewis M. Porter, known to be the identical person mentioned herein; the funeral was held at his residence in the village of Camden, N. Y.
LOUIS G. COLSON.

Dated and signed at Camden, New York, this 21st day of January, 1915.

Affidavit.

STATE OF NEW YORK,
County of Oneida, ss:

On this 21st day of January, A. D. 1915, personally appeared before me the above named Louis G. Colson, Clergyman, and made oath that the answers by him above named and subscribed are true.
[SEAL.] ALBERT T. WILKINSON,
Notary Public,
Camden, Oneida County, N. Y.

11 *Claimant's Affidavit of Charles H. Sweatland.*

Form C-23.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y. New York Office: 1 Madison Avenue.

Bureau of Claims.

Claim No. 60448.

Case of Lewis M. Porter.

Proof of Death. Affidavit of an Eye Witness.

In the Matter of the Death of Lewis M. Porter, late of Camden, N. Y., who was injured about 10:45 on the 17th day of December, 1915.

What is your full name? Charles H. Sweatland.
What is your age? 56 years.
What is your occupation? Section Foreman.
Where do you reside? Westdale, N. Y.
How long had you known the deceased? Twenty-three years.
Were you and the deceased close friends? Not especially.
Where was he when he met with the injury? Between the westerly rail of the R. R. track and a milk platform on the south side of Mexico Street crossing, Camden, N. Y.
What was he doing at the time? Shoveling snow out of the space between the track and said milk platform.
Were any persons other than yourself and deceased present at the time he was injured? If so, give their full names and addresses: Michael Leon, Camden, N. Y.: Howard Churchill, Camden, N. Y. Some ladies near the depot whose names I do not know.
State how alleged injury was received (give full details). Porter was stooping over with his back toward the track to take up a shovel full of snow when the cross beam of the engine of passenger
12 train No. 49 which was just coming into the station from the south struck him and dragged him across and killed him instantly.
What relation are you, if any, to the deceased? None.
Dated at Camden, N. Y. this 21st day of January, 1915.
Signature: CHARLES H. SWEATLAND.

Witness to signature:
ISABELLE CRAIG.

P. O. Address of witness: Camden, N. Y.

STATE OF NEW YORK,
County of Oneida, ss:

On this 21st day of January, 1915, personally appeared before the undersigned, a Notary Public in and for the said County and State, the above named Charles H. Sweatland, to me well known, and to whom I have read the foregoing questions and answers, and all the matter above stated, and who, after being fully advised in the premises, subscribed his name hereto in my presence, and made oath that the foregoing statements, and each and all of them are full and true, and are made without reservation or concealment.

[SEAL.] ALBERT T. WILKINSON,
Post-office Address, Camden, Oneida Co., N. Y.

13 *Claimant's Affidavit of Howard Churchill.*

Form C-23.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y. New York Office: 1 Madison Avenue.

Bureau of Claims.

Claim No. 60448.

Case of Lewis M. Porter.

Proof of Death. Affidavit of an Eye Witness.

In the Matter of the Death of Lewis M. Porter, late of Camden, N. Y., who was injured about 10:45 A. M. on the 17th day of December, 1914.

What is your full name? Howard Churchill.
What is your age? 30 years.
What is your occupation? Clerk in grocery store.
Where do you reside? Camden, N. Y.
How long had you known the deceased? Twenty years.
Were you and the deceased close friends? No.
Where was he when he met with the injury? At the Mexico Street crossing of N. Y. C. Railroad in village of Camden, N. Y.
What was he doing at the time? I did not see him when the train hit him. I think he was shoveling snow.
Were any persons other than yourself and deceased present at the time he was injured? If so, give their full names and addresses: Michael Leon, Camden, N. Y.
State how alleged injury was received (give full details). The first I saw of him he was being dragged or rolled along by the trucks

of the engine and cars of passenger train No. 49 north bound. I was standing at the crossing waiting for the train to pass.

What relation are you, if any, to the deceased? None.

14 Dated at Camden this 21st day of January, 1915.

Signature: HOWARD CHURCHILL.

Witness to signature:
ISABELLE CRAIG.

P. O. Address of witness: Camden, N. Y.

STATE OF NEW YORK,
County of Oneida, ss:

On this 21st day of January, 1915, personally appeared before the undersigned, a Notary Public in and for the said County and State, the above named Howard Churchill to me well known, and to whom I have read the foregoing questions and answers, and all the matter above stated, and who, after being fully advised in the premises, subscribed his name hereto in my presence, and made oath that the foregoing statements, and each and all of them are full and true, and are made without reservation or concealment.

[SEAL.] ALBERT T. WILKINSON,
Post-office Address, Camden, Oneida Co., N. Y.

15 *Affidavit of Claimant as to Death.*

Form C-24.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y. New York Office: 1 Madison Avenue.

Bureau of Claims.

Claim No. 60448.

Case of Lewis M. Porter.

Proof of Death. Affidavit of Wife (or Dependent Husband).

In the Matter of the Death of Lewis M. Porter, Late of Camden, N. Y., who was injured about 10:45 A. M. on the 17th day of December, 1914.

What is your full name? Anna Clara Porter.
What is your age? 39 years.
What is your P. O. address? Camden, Oneida County, New York.
What was your relationship to the deceased? Wife.

What employment was the deceased following at the time of the above-mentioned injury, and how long had he been so engaged? Section hand on the Ontario Division of New York Central & Hudson River Railroad at Camden, N. Y. for about two weeks.

What is the name and address of the employer of the deceased at the time of the above-mentioned injury? New York Central and Hudson River Railroad Company, Grand Central Terminal, New York City.

What are the names and addresses of all the physicians who saw the deceased after the above mentioned injury? No physician saw him excepting the coroner, Dr. M. T. Powers of Rome, N. Y.

When did the deceased die? Dec. 17, 1914. Instantly killed.

Was there an inquest concerning the death of the deceased? Yes.

16 If so, by whom? Dr. M. T. Powers, Rome, N. Y., Coroner of Oneida County.

Dated at Camden, N. Y. this 16th day of January, 1915.

Signature: ANNA C. PORTER.

Witness to signature:

ISABELLE CRAIG.

P. O. Address of witness: Camden, N. Y.

STATE OF NEW YORK,
County of Oneida, ss:

On this 16th day of January, 1915, personally appeared before the undersigned, a Notary Public in and for the said County and State, the above named Anna C. Porter to me well known, and to whom I have read the foregoing questions and answers, and all the matter above stated, and who, after being duly advised in the premises, subscribed his (her) name hereto in my presence, and make oath that the foregoing statements, and each and all of them, are full and true, and are made without reservation or concealment.

[SEAL.] ALBERT T. WILKINSON,
Notary Public.

Post Office Address Camden, Oneida Co., N. Y.

17 *Employer's Report of Accident.*

Form C-2.

State Workmen's Compensation Commission.

Principal Office: The Capitol, Albany, N. Y. New York Office: 1 Madison Avenue.

Bureau of Claims.

Claim No. 60448.

Case of Lewis M. Porter.

Employer's First Report of Injury.

INSTRUCTIONS.—The employer must fill out this form and return same to the Commission, at its New York Office, within ten days after every accident which causes any loss of work or requires medical attendance. (See penalty, Sec. 111 of the law printed on the back hereof.) In filling out this form use pen or typewriter.

Employer's name: The New York Central Railroad Co.
Office address New York City: Grand Central Terminal.
Business, goods produced, work done or kind of trade or transportation: Railroad.
Location of plant or place of work where accident occurred: Camden, N. Y.
In what city or village? Camden, N. Y.
Date of accident: 17th day of December, 1914; hour of day 10:44 A. M.
Did accident happen on the premises? Yes.
Was employee injured in course of employment? Yes.
Give full name of injured employee: Lewis M. Porter.
Address Camden, N. Y., Cor. 2nd and Union St.
Sex, Male. Age 42, Speak English? Yes.
Occupation when injured? Sectionman.
Was injured employee doing his regular work? Yes.
18 How long was injured person in your employment? About 15 days.
Piece or time worker? Wages or average earnings per day? $1.50.
Describe in full how the accident occurred. Was shoveling snow at crossing and failed to clear engine between milk platform and main track and was struck by engine of train No. 49.
State nature and extent of injury. Killed instantly.
Is injured employee married or single? Married.
Is insurance carried in the State Fund? No. If not, in what com-

pany or association? Self Insured. Man was engaged in interstate commerce; employer also engaged in interstate commerce.

Signed, this 25th day of February, 1915, at New York, N. Y.

Firm name: The New York Central Railroad Co.

(Signed) H. H. DOWNS,
Official Title Chief Claim Agent.

19 *Employer's Affidavit of Fred J. Hoffman.*

STATE OF NEW YORK,
County of Oneida, ss:

Fred J. Hoffman, residing at Camden, N. Y., deposes and says, that he is employed as section foreman on Sub. Div. No. 16, at Camden, N. Y., and so employed about 22 years; that he had charge of maintaining the right of way of The New York Central Railroad Company at Camden, N. Y., at the time section laborer Lewis M. Porter was killed; that said Porter was employed by him and was working under him at time of said accident; that the general duties of said Porter consisted of doing all repair and renewal work to any and all tracks and to keep the railroad right of way at any point between the railroad right of way lines free from debris and obstruction of all kinds; that at the time of said accident the deceased was engaged shoveling snow from the railroad right of way close to the west side of the main track and was struck by northbound passenger train No. 49 moving on said main track.

FRED J. HOFFMAN, *Deponent.*

Subscribed and sworn to before me this 23rd day of February, 1915.

A. H. GILLIGAN,
Notary Public.

20 *Employer's Affidavit of Samuel E. Armstrong.*

STATE OF NEW YORK,
County of Oswego, ss:

Samuel E. Armstrong, residing at Richland, N. Y., deposes and says, that he is employed by The New York Central Railroad Company as Supervisor of Track, having supervision of all tracks on Sub. Div. No. 16, between Richland and Rome, N. Y., and that he has been so employed for the past ten months; that Lewis M. Porter, employed as section laborer at Camden, N. Y., was fatally injured at Camden, N. Y., on December 17th, 1914, while shoveling out snow from close to west side of the main track on account of having been struck by northbound passenger train No. 49; that the said main track, at the point where said deceased was working and was killed, did carry interstate trains.

SAMUEL E. ARMSTRONG, *Deponent.*

Subscribed and sworn to before me this 23rd day of February, 1915.

A. H. GILLIGAN,
Notary Public.

21 *Employer's Affidavit of James M. Qualey.*

STATE OF NEW YORK,
County of Oswego, ss:

James M. Qualey, of Richmond, N. Y., being duly sworn, deposes and says that on December 17, 1914, he was employed by the New York Central and Hudson River Railroad Company as Trainmaster, having jurisdiction over the portion of said railroad passing through Camden, N. Y.; that he is familiar with the track on which Lewis M. Porter, a section laborer, was working when struck and fatally injured by train No. 49 on that date; that the said track was regularly used by and maintained for the use of trains carrying passengers and freight destined from and to points outside of the State of New York; that among the specific trains and interstate shipments that on December 17, 1914, passed over the track at Camden, N. Y., where the said Lewis M. Porter was working at the time he was killed was train No. 32, containing car N. H. 91148, originating at Huntingdon, Quebec, destined to Boston, Mass., also car M. C. 46765 originating at Ottawa, Canada, destined to New York City, also car C 59138, originating at St. Regis Falls, N. Y., destined to Weehawken, N. J.

JAMES M. QUALEY.

Subscribed and sworn to before me this 17th day of April, 1915.
[SEAL.]

F. M. MOORE,
Notary Public.

22 *Employer's Objections to Award.*

Feb. 25th, 1915.
P. I. R.-79835.

f-h2.
Jeremiah F. Connor, Esq., Counsel State Workmen's Compensation Com., No. 1 Madison Ave., New York City.

DEAR SIR: Referring to claim No. 60448 arising out of fatal injury to Lewis M. Porter, sectionman at Camden, N. Y., Dec. 17th, 1914. This claim was presented to the Commission at Syracuse on the 9th inst., and was referred to you for attention.

I am enclosing for your information and to become a part of the record of the Commission affidavits of Supervisor of Track Armstrong and Section Foreman Hoffman; also C-2 report. From the facts this would clearly seem to be a case coming under the Federal Employers' Liability Law, and we will accordingly object to the making of an award, and would request that the claim be disallowed.

Our reasons for objecting to an award are:

First. That the employer and employe were engaged in interstate commerce.

Pederson v. Lackawanna 229 U. S. 146;
Zikos v. Railway 179 Fed. 893;
Colasurdo v. Railroad 180 Fed. 832.

Second. That any rights the claimant may have arise under the Federal Employers' Liability Act of 1908, said law having been held to be an exclusive remedy available to any employe of an employer engaged in interstate commerce.

Second Employers' Liability Cases, 223, U. S. 1;
Cond v. Atchison Ry., 173 Fed. 527.

23 Third. That claimant was not engaged in intrastate commerce at the time of receiving the injuries resulting in his death within the provisions of Section 114 of Chapter 41 of the Law of 1914, of the State of New York, entitled "Workmen's Compensation Law."

Fourth. That to award to the claimant compensation under the provisions of said "Workmen's Compensation Law," will deprive the employer, The New York Central Railroad Company, of its property without due process of law, and will deny to it the equal protection of the laws in contravention of the provisions of the fourteenth amendment to the Federal Constitution.

Fifth. That to award to the claimant compensation under the provisions of said "Workmen's Compensation Law" will deprive the employer, The New York Central Railroad Company of its right of trial by jury guaranteed to it by Section 2 of Article 1 of the Constitution of the State of New York, and the seventh amendment to the Federal Constitution.

Very truly yours,

W. H. FAILING.

24 *Employer's Requests to Find.*

State Workmen's Compensation Commission.

Claim No. 60448.

In the Matter of LEWIS M. PORTER, Deceased.

The employer, The New York Central and Hudson River Railroad Company, herewith submits the following proposed findings of fact and conclusions of law which it requests the Commission to make herein:

Findings of Fact.

1. The above named Lewis M. Porter (hereinafter designated as the employee), at about 10:44 o'clock in the forenoon of December 17, 1914, while employed as a section laborer by the New York Cen-

tral and Hudson River Railroad Company (hereinafter designated as the employer), upon and along said employer's tracks in the village of Camden, County of Oneida and State of New York, was struck by a north bound passenger train of said employer, commonly known as train No. 49, and thereby received injuries from which he immediately died.

2. At the time when said employee sustained said injuries, said employer was a common carrier by railroad, engaged in commerce between the several states, and between the State of New York and Dominion of Canada, a foreign country.

25 3. At the time when he sustained said injuries, said employee, as such section laborer, was engaged in performing his usual duties, to wit, in shoveling snow upon the premises of said employer from and between its west bound main track and a platform near the intersection of said track and Mexico Street in said village of Camden.

4. Over said track along and near which said employee was working when he received said injuries, passed, on said 17th day of December, 1914, train No. 32 of said employer, which contained a car load of freight in transit between Huntingdon in the Province of Quebec, Dominion of Canada, and the City of Boston in the State of Massachusetts and which contained, also, a car load of freight in transit between the City of Ottawa, in the Province of Ontario, Dominion of Canada, and the City of New York, and which contained also a car load of freight in transit between St. Regis Falls, in the State of New York, and the City of Weehawken, in the State of New Jersey.

Conclusions of Law.

First. While acting in the course of his employment as such section laborer, when he received said injuries, said employee was engaged by said employer in commerce between the several states, and between the State of New York and Dominion of Canada, a foreign country.

Second. When he sustained said injuries, said employee was not engaged in intrastate commerce, within the provisions of section 114 of chapter 41 of the Laws of 1914 of the State of New York, entitled the "Workmen's Compensation Law."

26 Third. To award to the claimant herein compensation under the provisions of said "Workmen's Compensation Law" will deprive said employer of its property without due process of law, and will deny to said employer the equal protection of the laws in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States.

Fourth. To award to the claimant herein compensation under the provisions of said "Workmen's Compensation Law" will deprive said employer of its right to trial by jury, guaranteed to it by section 2 of Article I of the Constitution of the State of New York.

Fifth. Said claimant is not entitled to any award herein by this Commission, and the above entitled proceeding should be dismissed.

All of which is respectfully submitted.
Dated, February 10th, 1915.

VISSCHER, WHALEN & AUSTIN,
Attorneys for The New York Central and Hudson River Railroad Company.

Office and Post Office Address, 19 Tweddle Building, Albany, N. Y.

27 *Decision and Award of Commission.*

State Workmen's Compensation Commission.

Claim No. 60448.

In the Matter of the Claim of ANNA C. PORTER on Behalf of Herself as Widow, and Margaret Porter, Adele Porter, and Clarissa Porter, Daughters, and Park Porter, Son, for Compensation Arising out of the Death of Lewis M. Porter,

against

THE NEW YORK CENTRAL RAILROAD COMPANY, Employer and Self-Insurer.

This claim came on for hearing before the Commission, at the Syracuse office of the Commission, Syracuse, New York, on February 9th, 1915, and for a further hearing at the office of the Commission, No. 1 Madison Avenue, Borough of Manhattan, City of New York, on February 10, 1915, at which award of compensation was made.

Appearances:

Jeremiah F. Conner, Esq., Counsel to Workmen's Compensation Commission.
A. T. Wilkinson, Esq., Attorney for Claimants.
Willis H. Failing, Esq., Attorney for Employer.

All the evidence submitted before the Commission having been heard and duly considered, the Commission makes its Conclusions of Fact, Ruling of Law, and Award, as follows:

28 *Conclusions of Fact.*

1. The New York Central Railroad Company is a corporation duly organized under the laws of the State of New York, engaged in the operation of a railroad which extends through the Village of Camden, Oneida County, New York. Lewis M. Porter resided at Camden,

N. Y., and upon the date of the accident, December 17, 1914, was in the employ of The New York Central Railroad Company as a laborer.

2. On said date, while engaged in shoveling snow upon the premises of The New York Central Railroad Company between the west bound track and a platform near the intersection of said tracks and Mexico Street in the Village of Camden, he was struck by the engine of a passenger train known as train No. 49, which was proceeding northerly on the west bound track, receiving injuries from which he died immediately.

3. The tracks of The New York Central Railroad Company at the point where the deceased was working, were used for the purpose of transporting both interstate and intrastate cars and both interstate and intrastate commerce.

4. Lewis M. Porter, deceased, was not employed in interstate commerce at the time of the accident.

5. The injuries received by Lewis M. Porter were accidental injuries arising out of and in the course of his employment and resulted in his death. Such injuries were not caused solely by the intoxication of the injured employee while on duty, and were not occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or another.

6. The average weekly wage of Lewis M. Porter, deceased, was the sum of $8.83 per week.

29 7. Lewis M. Porter left him surviving his wife, Anna C. Porter, aged forty years; a daughter, Margaret Porter, aged thirteen years; a son, Park Porter, aged eleven years; a daughter, Adele Porter, aged nine years; and a daughter, Clarissa Porter, aged seven years.

Ruling of Law.

This claim comes within the provisions of Chapter 67 of the Consolidated Laws, being Chapter 816 of the Laws of 1913 as re-enacted and amended by Chapter 41 of the Laws of 1914 and amended by Chapter 316 of the Laws of 1914, known as the Workmen's Compensation Law.

Award.

Award of compensation is hereby made to Anna C. Porter, widow, at the rate of $2.65 per week during widowhood, with two years' compensation in one sum upon remarriage; to Margaret Porter, daughter, at the rate of $.81 per week until she shall arrive at the age of 18 years; to Park Porter, son, at the rate of $.81 per week until he shall arrive at the age of eighteen years; to Adele Porter, daughter, at the rate of $.81 per week until she shall arrive at the age of eighteen years; and to Clarissa Porter, daughter, at the rate of $.81 per week until she shall arrive at the age of eighteen years, provided, however, that when said Margaret Porter shall arrive at the age of eighteen years, the compensation payable to Park Porter, Adele Porter and Clarissa Porter shall be increased to the rate of $.88 each,

per week; to Bert A. Sanborn for funeral expenses in the sum of $89.00.

Dated, February 10th, 1915.

STATE WORKMEN'S COMPENSATION COMMISSION,
ROBERT E. DOWLING, *Chairman.*
JOHN MITCHELL.
THOMAS DARLINGTON.
H. T. MOSHER.

30 *Employer's Notice of Exceptions.*

State Workmen's Compensation Commission.

Claim No. 60448.

In the Matter of LEWIS M. PORTER, Deceased.

To the Attorney General of the State of New York; The State Workmen's Compensation Commission; Hon. Jeremiah F. Conner, Counsel to said Commission; A. T. Wilkinson, Esq., Attorney for Claimant.

SIRS: Please take notice that the employer, The New York Central and Hudson River Railroad Company, hereby excepts as follows to the decision and award of the State Workmen's Compensation Commission herein, as well as to the refusal of said Commission to make findings of facts and conclusions of law in accordance with the requests of said employer, bearing date February 10, 1915, and filed with said Commission:

1. To the finding that Lewis M. Porter, deceased, was not employed in interstate commerce at the time of the accident in which he met his death.

2. To the ruling of law that the claim herein comes within the provisions of the Workmen's Compensation Law.

31 3. To each and every part of the award of compensation herein made.

4. To the refusal of said Commission to make said employer's requested finding of fact numbered 1.

5. To the refusal of said Commission to make said employer's requested finding of fact numbered 2.

6. To the refusal of said Commission to make said employer's requested finding of fact numbered 3.

7. To the refusal of said Commission to make said employer's requested finding of fact numbered 4.

8. To the refusal of said Commission to make said employer's requested conclusion of law numbered "First".

9. To the refusal of said Commission to make said employer's requested conclusion of law numbered "Second".

10. To the refusal of said Commission to make said employer's requested conclusion of law numbered "Third".

11. To the refusal of said Commission to make said employer's requested conclusion of law numbered "Fourth".

12. To the refusal of said Commission to make said employer's requested conclusion of law numbered "Fifth".

Dated, April 30th, 1915.

VISSCHER, WHALEN & AUSTIN,
Attorneys for The New York Central and Hudson River Railroad Company.

Office and Postoffice Address, 19 Tweddle Building, Albany, N. Y.

32 *Employer's Notice of Appeal.*

State Workmen's Compensation Commission.

Claim No. 60448.

In the Matter of LEWIS M. PORTER, Deceased.

To the Attorney General of the State of New York; The State Workmen's Compensation Commission; Hon. Jeremiah F. Connor, Counsel to said Commission; A. T. Wilkinson, Esq., Attorney for Claimant.

SIRS: Please Take Notice that the New York Central and Hudson River Railroad Company, employer herein, hereby appeals to the Appellate Division of the Supreme Court, from the decision and award of the State Workmen's Compensation Commission herein, which bears date February 10th, 1915.

Dated, April 30th, 1915.

Yours, &c.,

VISSCHER, WHALEN & AUSTIN,
Attorneys for The New York Central and Hudson River Railroad Company.

Office and Postoffice Address, 19 Tweddle Building, Albany, N. Y.

33 *Stipulation Waiving Certification.*

Supreme Court, Appellate Division, Third Judicial Department.

In the Matter of LEWIS M. PORTER, Deceased; ANNA C. PORTER, Claimant, Respondent,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Employer, Appellant.

Stipulated, pursuant to the provisions of Section 3301 of the Code of Civil Procedure, that the preceding printed copies of notice of ap-

peal, decision and award of the State Workmen's Compensation Commission, and papers and records on file in the office of said Commission, which constitute all of the papers used, records filed and proceedings, including the evidence, taken before said Commission in the above entitled proceeding, and upon which said Commission acted in rendering said decision and award, are true and correct copies of the whole of the respective originals thereof now on file in the office of said Commission, and that certification thereof is hereby waived.

Dated November 24, 1915.

VISSCHER, WHALEN & AUSTIN,
Attorneys for Appellant.
E. E. WOODBURY,
Attorney General.
J. F. CONNOR,
Counsel for Compensation Commission.
A. T. WILKINSON,
Attorney for Claimant.

34 *Order Directing Settlement and Filing of Case.*

Pursuant to the foregoing stipulation, it is

Ordered, that the foregoing printed record is hereby settled as and for the record on appeal herein and is hereby ordered filed in the office of the Clerk of the Appellate Division of the Supreme Court, Third Department.

Dated November 24, 1915.

JOHN MITCHELL,
Acting Chairman of the State Industrial Commission.

35 *Affidavit of No Opinion.*

Supreme Court, Appellate Division, Third Judicial Department.

In the Matter of LEWIS M. PORTER, Deceased; ANNA C. PORTER, Claimant, Respondent,

against

THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY, Employer, Appellant.

STATE OF NEW YORK,
County of Albany, ss:

Robert E. Whalen, being duly sworn, says that he is one of the attorneys for appellant in this proceeding, wherein no opinion was written by the State Workmen's Compensation Commission.

ROBERT E. WHALEN.

Sworn to before me this 24th day of November, 1915.

EDNA M. SAGER,
Notary Public, Albany County, N. Y.

36 At a Term of the Appellate Division of the Supreme Court in and for the Third Judicial Department, held at the Appellate Division Court-rooms, in the City of Albany, N. Y., commencing on the 4th day of January, 1916.

Present:

Hon. John M. Kellogg, Presiding Justice;
Hon. George F. Lyon,
Hon. Wesley O. Howard,
Hon. John Woodward,
Hon. A. V. S. Cochrane,
Associate Justices.

In the Matter of the Claim of ANNA C. PORTER on Behalf of Herself as Widow, and Margaret Porter, Adele Porter, and Clarissa Porter, Daughters, and Park Porter, Son, for Compensation Arising out of the Death of Lewis M. Porter, Claimant-Respondents,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Employer and Self-Insurer, Appellant.

The above named The New York Central & Hudson River Railroad Company, Employer and Self Insurer, having appealed from the award of the Workmen's Compensation Commission entered in the office of said Commission on the 10th day of February, 1915, whereby compensation was awarded to the above named Anna C. Porter, widow, at the rate of $2.65 per week during widowhood, with two years' compensation in one sum upon remarriage; to Margaret Porter, daughter, at the rate of $.81 per week until she shall arrive at the age of eighteen years; to Park Porter, son, at the rate of $.81 per week until he shall arrive at the age of eighteen years; to Adele Porter, daughter, at the rate of $.81 per week until she shall arrive at the age of eighteen years; and to Clarissa Porter, daughter,
37 at the rate of $.81 per week until she shall arrive at the age of eighteen years, provided, however, that when said Margaret Porter shall arrive at the age of eighteen years, the compensation payable to Park Porter, Adele Porter and Clarissa Porter shall be increased to the rate of $.88 each, per week; to Bert A. Sanborn for funeral expenses in the sum of $89.00; and said appeal having come on to be heard in this court, and having been argued by Robert E. Whalen, Esq., of counsel for appellant, and E. C. Aiken, Deputy Attorney General, for the State Industrial Commission, formerly the Workmen's Compensation Commission, and due deliberation having been had thereon,

Now, on motion of Egburt E. Woodbury, Attorney General and attorney for the State Industrial Commission, formerly the Workmen's Compensation Commission, it is

Ordered that the award of the Workmen's Compensation Commission appealed from be and the same hereby is in all respects unanimously affirmed. And it is further

Ordered that the application made by said employer-appellant upon the argument for leave to appeal to the Court of Appeals be and the same is hereby denied.

JOSEPH H. HOLLANDS, *Clerk.*

A Copy.
[L. S.] JOSEPH H. HOLLANDS, *Clerk.*

38 SIR: Take notice that the within is a copy of an order duly filed and entered in the office of the Clerk of App. Div. Third Dept. on the 18th day of January 1916.

Yours, etc.,

EGBURT E. WOODBURY,
Attorney-General.

[Endorsed:] Supreme Court, App. Div., Third Dept. In the Matter of the Claim of Anna C. Porter, etc., Claimant-Respondent, against The New York Central & Hudson River Railroad Company, Employer and Self Insurer, Appellant. Copy. Order of Affirmance. Egburt E. Woodbury, Attorney-General, Attorney for Resp't, Capitol, Albany, N. Y.

39 Supreme Court, Appellate Division, Third Judicial Department.

In the Matter of the Claim of ANNA C. PORTER on Behalf of Herself as Widow, and Margaret Porter, Adele Porter, and Clarissa Porter, Daughters, and Park Porter, Son, for Compensation Arising out of the Death of Lewis M. Porter, Claimant-Respondents,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Employer and Self-Insurer, Appellant.

It is hereby stipulated by and between the attorneys for the respective parties hereto, pursuant to rule 8 of the Supreme Court of the United States, that the following portions of the record shall constitute the transcript of record on writ of error from the Supreme Court of the United States, and that the Clerk shall transmit to the Clerk of the Supreme Court of the United States only the papers herein designated as follows:

Statement under Rule 41 of the General Rules of Practice,
Claimant's First Notice of Death,
Claimant's Second Notice of Death,
Claim for Compensation,

Employer's Proof of Death,
Undertaker's Proof of Death,
Clergyman's Proof of Death,
Affidavit of Charles H. Sweatland as to Death,
Affidavit of Howard Churchill as to Death,
Affidavit of Claimant as to Death,
Employer's Report of Accident,
Employer's Affidavit of Fred J. Hoffman,
40 Employer's Affidavit of Samuel E. Armstrong,
Employer's Affidavit of James M. Qualey,
Employer's Objections to Award,
Employer's Requests to Find,
Decision and Award of Commission,
Employer's Notice of Exceptions,
Employer's Notice of Appeal to Appellate Division,
Stipulation Waiving Certification,
Order Directing Settlement and Filing of Case,
Affidavit of No Opinion by Commission,
Appellate Division's Order of Affirmance and Denial of Leave to Appeal to Court of Appeals.

Dated, February 10th, 1917.

VISSCHER, WHALEN & AUSTIN,
Attorneys for Appellant.
EGBURT E. WOODBURY (E. C. A.),
Attorney General,
Attorney for Industrial Commission and Respondent.

41 [Endorsed:] (Original.) Supreme Court, Appellate Division, Third Judicial Department. In the Matter of the Claim of Anna C. Porter &c., Claimant-Respondents, against The New York Central & Hudson River Railroad Company, Employer and Self Insurer, Appellant. Stipulation Pursuant to Rule 8 of the U. S. Supreme Court. Robert E. Whalen, of Counsel for Appellant, Office and Post-Office Address, 227 State Street, Albany, N. Y.

42 Supreme Court, Appellate Division, Third Judicial Department.

In the Matter of the Claim of ANNA C. PORTER on Behalf of Herself as Widow, and Margaret Porter, Adele Porter, and Clarissa Porter, Daughters, and Park Porter, Son, for Compensation Arising out of the Death of Lewis M. Porter, Claimant-Respondents,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Employer and Self-Insurer, Appellant.

STATE OF NEW YORK,
Third Judicial Department, ss:

I, Joseph H. Hollands, Clerk of said Court, do hereby certify that the foregoing is a true, full and complete transcript of the record and

proceedings in the case of Anna C. Porter, claimant-respondent, against The New York Central & Hudson River Railroad Company, employer-appellant, as set forth in the annexed stipulation, bearing date February 10th, 1917, and made pursuant to Rule 8 of the Supreme Court of the United States between the attorneys for the respective parties hereto, as the same now appears on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at my office in the City of Albany, State of New York, this 13th day of February, 1917.

[Seal Supreme Court, Appellate Division, Third Department.]

[L. S.] JOSEPH H. HOLLAND,
Clerk of the Appellate Division,
Supreme Court, Third Department.

43 [Endorsed:] (Original. Supreme Court, Appellate Division, Third Judicial Department. In the Matter of the Claim of Anna C. Porter &c., Claimant-Respondents, against The New York Central & Hudson River Railroad Company, Employer and Self Insurer, Appellant. Authentication of Record. Robert E. Whalen, of Counsel for Appellant, Office and Post-Office Address, 227 State Street, Albany, N. Y.

44 Supreme Court, Appellate Division, Third Judicial Department.

In the Matter of the Claim of ANNA C. PORTER on Behalf of Herself as Widow, and Margaret Porter, Adele Porter, and Clarissa Porter, Daughters, and Park Porter, Son, for Compensation Arising out of the Death of Lewis M. Porter, Claimant-Respondents,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Employer and Self-Insurer, Appellant.

UNITED STATES OF AMERICA,
State of New York, Third Judicial Department, ss:

In obedience to the commands of the writ of error herein allowed January 31st, 1917, I herewith transmit to the Supreme Court of the United States a duly certified transcript of such portions of the record and proceedings in the above entitled cause, as, in pursuance of Rule 8 of the Supreme Court of the United States, the attorneys for the respective parties hereto have by stipulation designated, with all things concerning the same.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Albany, State of New York, this 13th day of February, 1917.

[Seal Supreme Court, Appellate Division, Third Department.]

[L. S.] JOSEPH H. HOLLAND,
Clerk of the Appellate Division,
Supreme Court, Third Department.

44½ [Endorsed:] (Original.) Supreme Court, Appellate Division, Third Judicial Department. In the Matter of the Claim of Anna C. Porter &c., Claimant-Respondents, against The New York Central & Hudson River Railroad Company, Employer and Self Insurer, Appellant. Return to Writ of Error. Robert E. Whalen, of Counsel for Appellant, Office and Post-Office Address, 227 State Street, Albany, N. Y.

45 Supreme Court of the United States.

THE NEW YORK CENTRAL RAILROAD COMPANY, Plaintiff in Error,

against

ANNA C. PORTER, MARGARET PORTER, PARK PORTER, ADELE PORTER, and CLARISSE PORTER, Defendants in Error.

Prayer for Reversal.

To the Supreme Court of the United States:

Comes now The New York Central Railroad Company, plaintiff in error, and prays for a reversal of the order of the Supreme Court of the State of New York herein entered in the office of the Clerk of the Appellate Division thereof, in the Third Judicial Department of said State, on the 18th day of January, 1916, affirming a decision and award of the Workmen's Compensation Commission of said State, a reversal of which is likewise prayed, entered on the 10th day of February, 1915.

And your petitioner will ever pray.

Dated January 18, 1917.

ROBERT E. WHALEN,
Of Counsel for The New York Central Railroad Company.

46 Supreme Court of the United States.

THE NEW YORK CENTRAL RAILROAD COMPANY, Plaintiff in Error,

against

ANNA C. PORTER, MARGARET PORTER, PARK PORTER, ADELE PORTER, and CLARISSE PORTER, Defendants in Error.

Petition for Writ of Error.

To the Supreme Court of the United States and to the Honorable Justices thereof:

The petition of The New York Central Railroad Company, a corporation organized and incorporated by agreement of consolidation

bearing date April 29, 1914, and recorded in the office of the Secretary of State of the State of New York December 22, 1914, between several railroad corporations, among others, The New York Central and Hudson River Railroad Company (hereinafter designated as said railroad company), and to whose rights and liabilities your petitioner, by virtue of the statutes of the State of New York in such case made and provided, has succeeded, respectfully shows:

First. On or about the 26th day of December, 1914, the above named Anna C. Porter, as claimant, commenced before the State Workmen's Compensation Commission of the State of New York a special proceeding against said railroad company and therein alleged:

(*a.*) That one Lewis M. Porter, husband of claimant, at about 10:45 A. M. on the 17th day of December, 1914, while employed as a section hand by said railroad company upon its Ontario Division, at Camden, in the County of Oneida, State of New York, was
47 engaged in shoveling snow from between the track of said railroad and the platform of said railroad company's station at Camden, and that while he was so engaged in shoveling snow said Lewis M. Porter was struck by said railroad company's north bound passenger train, known as No. 49, and was instantly killed. In said proceeding, no negligence or other fault on the part of any one, in connection with the death of said Lewis M. Porter, was alleged, or proved or found.

(*b.*) That said Lewis M. Porter left him surviving, besides said claimant as his widow, four children, all under the age of eighteen years, whose respective names and dates of birth were as follows:

Name.	Date of birth.
Margaret Porter	December 24, 1901
Park Porter	March 5, 1903
Adele Porter	January 31, 1905
Clarisse Porter	August 30, 1907

(*c.*) That by reason of the death of said Lewis M. Porter claimant and his said four children had become entitled to be awarded by said Workmen's Compensation Commission compensation, payable by said railroad company, in accordance with the provisions of chapter 41 of the Laws of 1914 of the State of New York, commonly known as the Workmen's Compensation Law.

Second. In said proceeding before said commission your petitioner, as successor of said railroad, appeared and alleged that said Lewis M. Porter, when he met his death, was employed by said railroad, which was then engaging as a common carrier by rail, in commerce between the several states and between the State of New York and the Dominion of Canada, to wit, in removing snow upon the premises of said railroad from and between its station platform and its westbound main track over which said railroad operated
48 trains, carrying freight from the State of New York to the State of New Jersey, as well as from the Dominion of Canada

to the State of New York, and from the Dominion of Canada through said State of New York to the State of Massachusetts.

Third. Your petitioner contended in said proceeding before said commission:

(*a.*) That no compensation was payable under the provisions of said Workmen's Compensation Law to the widow or children of said Lewis M. Porter because the liability, if any, of said railroad company and of your petitioner for said Lewis M. Porter's death was defined and limited exclusively by the provisions of the Act of Congress entitled "An Act relating to the liability of common carriers by railroad to their employees in certain cases. Approved April 22, 1908", as amended April 5, 1910, and commonly known as the Federal Employers' Liability Act.

(*b.*) That to award such compensation for said death, under the provisions of said Workmen's Compensation Law, would deprive said railroad company of its property without due process of law, in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States.

(*c.*) That to award such compensation for said death, under the provisions of said Workmen's Compensation Law, would deny to said railroad company the equal protection of the laws, in contravention of the Fourteenth Amendment to the Constitution of the United States.

Fourth. After hearing the allegations and proofs of the parties, said State Workmen's Compensation Commission rendered its written decision and award which was entered February 10, 1915, wherein said commission found and decided that said Lewis M.

49 Porter, on the 17th day of December, 1914, while employed in shoveling snow upon the premises of said railroad company, between its westbound main track and its platform, in the Village of Camden, New York, was struck and immediately killed by said railroad company's north bound train No. 49; that the tracks of said railroad company, at the point where deceased was working, were used for the purpose of transporting cars in both interstate and intrastate commerce; that said Lewis M. Porter was not employed in interstate commerce at the time of his death, which was caused by accidental injuries arising out of and in the course of his employment; and that your petitioner should pay compensation, which was thereby awarded, to said Anna C. Porter at the rate of $2.65 per week during widowhood, with payment of two years' compensation in one sum if and when she should remarry; and to each of said four children the sum of .81¢ per week until such child shall reach the age of eighteen years. By said decision and award expenses of the funeral of said Lewis M. Porter, in the sum of $89.00, were decreed to be paid by your petitioner. Said commission also overruled all and singular the three contentions of your petitioner specified in paragraph third of this petition.

Fifth. From said decision and award of said Compensation Commission your petitioner duly appealed to the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, where, upon the argument of said appeal

which duly came on to be heard, said railroad company, through its counsel, duly urged, among other things, against the validity of said decision and award of said Compensation Commission all and singular the contentions hereinbefore specified in paragraph third of this petition, but said Appellate Division of the Supreme Court overruled each of the contentions aforesaid and, by an order bearing date January 4, 1916, and entered in the office of the Clerk of said
50 Appellate Division on the 18th day of January, 1916, said Appellate Division affirmed said decision and award of said Compensation Commission entered on the 10th day of February, 1915. In said Appellate Division its said order bearing date January 4, 1916, and entered January 18, 1916, now remains of record, as a final determination in the highest court of the State of New York in which a decision could be had of the questions so raised by your petitioner, as aforesaid, with respect to the exclusive application of the provision of said Federal Employers' Liability Act, and with respect to the violation of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States by the provisions of said Workmen's Compensation Law.

Sixth. It is provided by section 191 of the Code of Civil Procedure of the State of New York, as construed by said court in the case of Matter of Harnett v. Steen Company, reported in 216 N. Y. page 101, that no appeal shall be taken to the said Court of Appeals from an order of the Appellate Division unanimously affirming a decision and award rendered under said Workmen's Compensation Law, unless such Appellate Division shall certify that in its opinion a question of law is involved which ought to be reviewed by the Court of Appeals, or unless, in case of its refusal so to certify, an appeal is allowed by a judge of the Court of Appeals. Said order of affirmance herein rendered by said Appellate Division was upon the unanimous decision of said court, and thereupon your petitioner duly applied to said Appellate Division to certify that, in its opinion, a question of law was involved in this cause which ought to be reviewed by the Court of Appeals, and requested said Appellate Division to allow an appeal from its said order of unanimous affirmance to said Court of Appeals; but said Appellate Division refused to make such certification and refused to allow such appeal.
51 Thereupon your petitioner duly applied to Hon. Emory A. Chase, a judge of the Court of Appeals of said State, and moved before him for the allowance of an appeal to said Court of Appeals from said order of affirmance; but on the 10th day of March, 1916, Judge Chase denied the application of your petitioner to appeal to said Court of Appeals from said order of unanimous affirmance by said Appellate Division.

Seventh. Under and by virtue of the provisions of chapter 674 of the Laws of 1915, effective May 22, 1915, of the State of New York, said Workmen's Compensation Commission was abolished, and the duties and functions thereof, as prescribed by said chapter 41 of the Laws of 1914, were devolved upon the State Industrial Commission, which is composed of John Mitchell, Louis Wiard,

William H. H. Rogers, Edward P. Lyon and James M. Lynch who, as such Industrial Commission, appeared by the Attorney General of the State of New York in said Appellate Division in support of the validity of said order of the said Workmen's Compensation Commission thus brought up for review by said appeal to said Appellate Division.

Wherefore your petitioner prays that a writ of error may be allowed and issued, directed to the Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, commanding said Appellate Division to send to the Supreme Court of the United States the record of all and singular the record and papers in said special proceeding and for citation and supersedeas to stay execution, to the end that the errors of which your petitioner complains herein and in the assignment of errors herein filed may be reviewed and, if errors be found, corrected conformably to the constitution and laws of the United States.

And your petitioner will ever pray.

Dated, January 18th, 1917.

THE NEW YORK CENTRAL RAILROAD COMPANY,
By ROBERT E. WHALEN, *Counsel.*

52 STATE OF NEW YORK,
City and County of Albany, ss:

Robert E. Whalen, being duly sworn, deposes and says that he is the regularly retained counsel for the petitioner, The New York Central Railroad Company, in this proceeding. That he has read the foregoing petition, the contents whereof he knows to be true. That the reason why this verification is made by deponent is that said petitioner is a corporation, none of whose officers resides or is within the County of Albany, State of New York, where deponent resides and has his place of business.

ROBERT E. WHALEN.

Subscribed and sworn to before me this 18th day of January, 1917.
[SEAL.] EDNA M. SAGER,
Notary Public, Albany County, N. Y.

53 Supreme Court of the United States.

THE NEW YORK CENTRAL RAILROAD COMPANY, Plaintiff in Error,

against

ANNA C. PORTER, MARGARET PORTER, PARK PORTER, ADELE PORTER, and CLARISSE PORTER, Defendants in Error.

Assignment of Errors.

Comes now The New York Central Railroad Company, plaintiff in error, and makes and files this its assignment of errors:

1. The Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, in affirming, by its order herein entered January 18, 1916, the decision and award of the State Workmen's Compensation Commission of the State of New York, entered February 10, 1915, erred, as did also said State Workmen's Compensation Commission, in overruling the contention of the New York Central Railroad Company that its liability, if any, to defendants in error for the death of Lewis M. Porter, for which defendants in error have sought compensation in this proceeding, is defined and limited, exclusively, by the provisions of the Act of Congress, entitled "An Act relating to the liability of common carriers by railroad to their employees in certain cases. Approved April 22, 1908", as amended April 5, 1910, and commonly known as the Federal Employers' Liability Act, and in holding that said Federal Employers' Liability Act, does not define and limit, exclusively, the liability, if any, of the New York Central Railroad Company to said defendants in error for the death of said Lewis M. Porter.

2. The Appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, in affirming, by its order herein entered January 18, 1916, the decision and award of the State Workmen's Compensation Commission of the
54 State of New York, entered February 10, 1915, erred, as did also said State Workmen's Compensation Commission, in overruling the contention of the New York Central Railroad Company that to award to the above named defendants in error compensation in this proceeding, under the provisions of chapter 41 of the Laws of 1914 of the State of New York, commonly known as the Workmen's Compensation Law, would deprive the New York Central Railroad Company of its property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

3. The appellate Division of the Supreme Court, in and for the Third Judicial Department of the State of New York, in affirming, by its order herein entered January 18, 1916, the decision and award of the State Workmen's Compensation Commission of the State of New York, entered February 10, 1915, erred, as did also said State Workmen's Compensation Commission, in overruling the contention of the New York Central Railroad Company that to award to the above named defendants in error compensation in this proceeding, under the provisions of chapter 41 of the Laws of 1914 of the State of New York, commonly known as the Workmen's Compensation Law, would deny to the New York Central Railroad Company the equal protection of the laws, in contravention of the Fourteenth Amendment to the Constitution of the United States.

Dated, January 18th, 1917.

ROBERT E. WHALEN,
Of Counsel for The New York
Central Railroad Company.

55 [Endorsed:] (Original.) Supreme Court of the United States. The New York Central Railroad Company, Plaintiff-in-error, against Anna C. Porter and others, Defendants-in-error. Prayer for Reversal, Petition for Writ of Error and Assignment of Errors. Robert E. Whalen, of Counsel for Plaintiff-in-Error, Office and Postoffice Address, 227 State Street, Albany, N. Y.

56 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Appellate Division of the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The New York Central and Hudson River Railroad Company, Appellant, and Anna C. Porter, for herself and her four minor children, Margaret Porter, Park Porter, Adele Porter, and Clarisse Porter, respondent-, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was claimed
57 under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the New York Central Railroad Company, successor of the New York Central and Hudson River Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the

United States, the thirty-first day of January, in the year of our Lord one thousand nine hundred and seventeen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by

LOUIS D. BRANDEIS,
Associate Justice of the
Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. October term, 1916. The New York Central R. R. Co., Plaintiff in Error, vs. Anna C. Porter, et al. Writ of Error.

58 & 59 UNITED STATES OF AMERICA, *ss:*

To Anna C. Porter, Margaret Porter, Clark Porter, Adele Porter, Clarisse Porter, and John Mitchell et al., as and composing the State Industrial Commission of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York wherein The New York Central Railroad Company, successor to the New York Central and Hudson River Railroad Company, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Louis D. Brandeis, Associate Justice of the Supreme Court of the United States, this thirty-first day of January, in the year of our Lord one thousand nine hundred and seventeen.

LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court
of the United States.

Due and personal Service of a copy of the within Citation is hereby admitted this 10th day of February 1917.

E. E. WOODBURY (E. C. A.),
Attorney General,
Attorney for Defendants in Error.

60 Supreme Court of the United States.

THE NEW YORK CENTRAL RAILROAD COMPANY, Plaintiff in Error,

against

ANNA C. PORTER, MARGARET PORTER, PARK PORTER, ADELE PORTER, and CLARISSE PORTER, Defendants in Error.

Know all men by these presents, that The National Surety Company of New York, a corporation organized and existing under and by virtue of the Laws of the State of New York, and having its principal place of business at 115 Broadway, in the Borough of Manhattan, in the City of New York, is held and firmly bound unto Anna C. Porter, Margaret Porter, Park Porter, Adele Porter and Clarisse Porter in the sum of Two thousand five hundred Dollars, lawful money of the United States, to be paid to said Anna C. Porter, Margaret Porter, Park Porter, Adele Porter and Clarisse Porter, their executors, administrators and assigns, for which payment, well and truly to be made, said The National Surety Company of New York binds itself, its successors and assigns, jointly and severally firmly by these presents.

Sealed with the seal of said The National Surety Company of New York and dated this 18th day of January, 1917.

Now, whereas the above named The New York Central Railroad Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department of the State of New York entered on the 18th day of January, 1916, affirming a decision and award of the State Workmen's Compensation Commission of said State, a reversal of which is likewise sought, rendered on the 10th day of February, 1915,

Now, therefore, the condition of this obligation is such
61 that if the above named The New York Central Railroad Company shall prosecute its said writ of error to effect and, if it fail to make its plea good, shall answer all damages and costs, then this obligation shall be void; otherwise to remain in full force and virtue.

[L. S.] NATIONAL SURETY CO. OF NEW YORK, N. Y.,
By JOHN J. RYAN,
Attorney in Fact.

Approved this 31st day of January, 1917, to act as a supersedeas.

LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

62 Know all men by these presents, that the National Surety Company, a corporation duly organized and existing under

the Laws of the State of New York, and having its principal offices in the City of New York, hath made, constituted and appointed, and does by these presents, make, constitute and appoint John J. Ryan of Albany and State of New York its true and lawful Attorney, with full power and authority hereby conferred in its name, place and stead, to sign, execute and acknowledge any and all bonds not exceeding $50,000. each in amount, guaranteeing the fidelity of persons holding places of public or private trust; guaranteeing the performance of contracts other than insurance policies; guaranteeing the performance of insurance contract where surety bonds are accepted by State or Municipalities in lieu of actual deposits; and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law required and to bind the National Surety Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the common seal of the Company, and duly attested by its Secretary, hereby ratifying and confirming all the acts of said Attorney pursuant to the power herein given. This Power of Attorney is made and executed pursuant to and by authority of the following By-Law adopted by the Board of Directors of the National Surety Company at a meeting duly called and held on the Second day of February, 1909.

"Article XII. Resident Officers and Attorneys-in-Fact.

"Section 1. The President, First Vice-President or any other Vice-
" President may from time to time appoint Resident Vice-Presi-
" dents, Resident Assistant Secretaries and Attorneys-in-Fact to rep-
" resent and act for and on behalf of the Company, and either the
" President, First Vice President, or any other Vice-President, the
" Board of Directors or the Executive Committee may at any time
" remove any such Resident Vice-President, Resident Assistant Secre-
" tary or Attorney-in-Fact and revoke the power and authority given
" him.

"Section 4. Attorneys-in-Fact. Attorneys-in-Fact may be given
" full power and authority to execute for and in the name and on
" behalf of the Company, any and all bonds, recognizances, contracts
" of indemnity and other writings obligatory in the nature
63 " of a bond, recognizance or conditional undertaking, and
" any such instrument executed by any such Attorney-in-Fact
" shall be as binding upon the Company as if signed by the President
" and sealed and attested by the Secretary."

And, at a meeting of the Board of Directors of the National Surety Company, duly called and held on the Seventh day of March, A. D. 1912, a quorum being present, the following additional section to the foregoing By-Law was adopted:

"Section 6. Attorneys-in-Fact. Attorneys-in-Fact are hereby au-
" thorized to verify any affidavit required to be attached to bonds,
" recognizances or contracts of indemnity, policies of insurance and
" all other writings obligatory in the nature thereof, and are also
" authorized and empowered to certify to a copy of any By-Law con-

"tained in Articles VI, XII and XIII of the By-Laws of the Com-
"pany."

In witness whereof, the National Surety Company has caused these presents to be signed by its President and its corporate seal to be hereto affixed, duly attested by its Assistant Secretary, this eleventh day of November, A. D. 1916.

NATIONAL SURETY COMPANY,
By WM. B. JOYCE, *President.*

Attest:

M. CROOKE,
Assistant Secretary.

STATE OF NEW YORK,
County of New York, ss:

On this eleventh day of November, A. D. 1916, before me personally came Wm. B. Joyce to me known, who being by me duly sworn, did depose and say, that he resides in the City of New York; that he is the President of the National Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation: that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[SEAL.] WM. M. WEAVER,
Notary Public.

64 STATE OF NEW YORK,
County of New York, ss:

I, M. Crooke, Assistant Secretary of the National Surety Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said National Surety Company, which is still in full force and effect.

In witness whereof, I have hereunto set my hand and affixed the seal of said Company, at the City of New York, this 17th day of November, A. D. 1916.

[L. S.] M. CROOKE,
Assistant Secretary.

65 National Surety Company of New York.

Financial Statement, September 30, 1916.

Wm. B. Joyce, President.
Hubert J. Hewitt, Secretary.

Assets.

Cash in Banks and Offices	$791,850.76
Government, Municipal and Other Bonds, and Stocks	8,538,074.74
Real Estate	102,655.00
Mortgages and Collateral Loans	133,030.48
Unpaid Premiums (excluding Premiums 90 days overdue)	814,809.26
Accrued interest and Accounts Receivable	559,580.54
Total	$10,940,000.78

Liabilities.

Unearned Premium Reserve	$2,386,217.60
Contingent Claim and Expense Reserve (Less Reinsurance)	959,619.52
Reserve for taxes and Unpaid Commissions (not due)	218,106.53
Accounts Payable and Expenses Incurred (not due)	133,235.04
Dividend Declared (Payable Oct. 1st, 1916)	90,000.00
Capital Stock	3,000,000.00
Surplus	4,152,822.09
Total	$10,940,000.78

66 STATE OF NEW YORK,
County of New York, ss:

M. Crooke, being duly sworn, says: That he is Assistant Secretary of the National Surety Company, that said Company is a Corporation duly organized, existing and engaged in business as a Surety by virtue of the Laws of the State of New York, and has duly complied with all the requirements of the Laws of said State and of the Laws of the State of New York applicable to said Company, and is duly qualified to act as Surety under such laws; that said Company has also complied with and is duly qualified to act as Surety under the Act of August 13, 1894, entitled "An Act Relative to Recognizances, Stipulations, Bonds and Undertakings, and To Allow Certain Corporations To be Accepted As Surety Thereon", as amended by the Act of Congress of March 23, 1910. That the foregoing is a full,

true and correct statement of the financial condition of said Company on the 30th day of September, 1916.

M. CROOKE,
Assistant Secretary.

Sworn to before me this 19th day of December, 1916.

WM. M. WEAVER,
Notary Public for New York County, No. 36.

Certificates filed in Kings, No. 51, Nassau, Queens, No. 468, Bronx No. 4, Richmond and Westchester Counties, New York County Register's Office No. 205, Kings County Register's Office No. 8004, Bronx County Register's Office No. 811.
My Commission expires March 30, 1918.

67 STATE OF NEW YORK,
County of Albany, ss:

On this 18th day of January, 1917, before me personally came John J. Ryan, to me known, who, being by me duly sworn, did depose and say: that he resided in the City of Albany; that he is the Attorney-in-Fact of the National Surety Company, the Corporation described in and which executed the above instrument, that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

[SEAL.] RAYMOND A. KELTON,
Notary Public, Albany Co., N. Y.

68 [Endorsed:] (Copy.) Supreme Court of the United States. The New York Central Railroad Company, Plaintiff-in-error, against Anna C. Porter and others, Defendants-in-error. Supersedeas Bond. Robert E. Whalen, of Counsel for Plaintiff-in-error, Office and Postoffice Address, 227 State Street, Albany, N. Y.

69 Supreme Court, Appellate Division, Third Judicial Department.

In the Matter of the Claim of ANNA C. PORTER on Behalf of Herself as Widow, and Margaret Porter, Adele Porter, and Clarissa Porter, Daughters, and Park Porter, Son, for Compensation Arising Out of the Death of Lewis M. Porter, Claimant-Respondents,

against

THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, Employer and Self-Insurer, Appellant.

STATE OF NEW YORK,
Third Judicial Department, ss:

I, Joseph H. Hollands, Clerk of said Court, do hereby certify that there have been lodged with me, as such clerk, this day, in the above entitled cause:

1. The original bond, of which a copy is hereto annexed.
2. Two copies of the writ of error as herein set forth, one for the defendant in error above, and one to file in my office.
3. One copy of the petition, assignment of error and prayer for reversal herein.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Albany, State of New York, this 13th day of February, 1917.

[Seal Supreme Court, Appellate Division, Third Department.]

[L. S.] JOSEPH H. HOLLAND,
Clerk of the Appellate Division,
Supreme Court, Third Department.

70 [Endorsed:] (Original.) Supreme Court, Appellate Division, Third Judicial Department. In the Matter of the Claim of Anna C. Porter &c., Claimant-Respondents, against The New York Central & Hudson River Railroad Company, Employer and Self Insurer, Appellant. Certificate of Lodgment. Robert E. Whalen, of Counsel for Appellant, Office and Post-Office Address, 227 State Street, Albany, N. Y.

Endorsed on cover: File No. 25,772. New York Supreme Court, Appellate Division, 3d Judicial Department. Term No. 942. The New York Central Railroad Company, successor of The New York Central & Hudson River Railroad Company, plaintiff in error, vs. Anna C. Porter, for herself and her four minor children, Margaret Porter, Park Porter, Adele Porter, and Clarisse Porter, et al. Filed February 15th, 1917. File No. 25,772.

-21-

Office Supreme Court, U. S.
FILED
NOV 27 1918
JAMES D. MAHER,
CLERK.

BRIEF OF PLAINTIFF-IN-ERROR.

SUPREME COURT OF THE UNITED STATES.

October Term, 1918.

No. 134.

THE NEW YORK CENTRAL RAILROAD COMPANY,
PLAINTIFF-IN-ERROR,

vs.

ANNA C. PORTER, for Herself and Her Four Minor Children, MARGARET PORTER, PARK PORTER, ADELE PORTER and CLARISSE PORTER et al.,
DEFENDANTS-IN-ERROR.

In Error to the Supreme Court, Appellate Division, Third Judicial Department, of the State of New York.

ROBERT E. WHALEN, Albany, N. Y.,
Counsel for Plaintiff-in-Error.

BRIEF FOR PLAINTIFF-IN-ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 134.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Plaintiff-in-Error,
against

ANNA C. PORTER, for Herself and Her Four Minor Children, MARGARET PORTER, PARK PORTER, ADELE PORTER and CLARISSE PORTER et al.,
Defendants-in-Error.

In error to the Supreme Court, Appellate Division, Third Judicial Department, of the State of New York.

Statement of the Case.

This case involves:

(a) The question whether the work of Lewis M. Porter, when he was fatally injured, constituted, within the provisions of the Federal Employers' Liability Act, employment in interstate commerce by the predecessor of plaintiff-in-error, then an interstate carrier by railroad.

(b) The applicability of the Federal Employers' Liability Act to the exclusion of the Workmen's Compensation Law of the State of New York, if such work constituted employment of Porter in interstate commerce.

This proceeding was commenced by decedent's widow before the State Workmen's Compensation Commission of the State of New York, a commission established by said Workmen's Compensation Law and superseded by the State Industrial Commission, to recover under said law compensation because of the death of Lewis M. Porter as the result of fatal injuries sustained by him while employed as a section hand by The New York Central and Hudson River Railroad Company, predecessor in interest to the plaintiff-in-error.

There were no pleadings before the Commission in this matter, which had its inception when defendant-in-error, Anna C. Porter, as claimant, filed with the Commission a claim for compensation (Transcript, pp. 3-4) and served upon the railroad company notice of the employee's death. (Transcript, pp. 1-2.)

Before the Commission the matter was heard summarily upon the claimant's notices of death, her claim for compensation, supplemental affidavits as to the fact and cause of death (Transcript, pp. 1-11); and upon the employer's report of fatal injury and affidavits filed by the employer, setting forth the nature and circumstances of Porter's employment when he was killed. (Transcript, pp. 12-14.)

In addition to objections on constitutional grounds, which were subsequently decided adversely to the contention of plaintiff-in-error in *New York Central R. R. Co.* v. *White* (243 U. S. 188), the railroad company interposed before the Commission the following objections to the rendition of any award to claimant under the State Workmen's Compensation Law:

1. That both employer and employee, on the occasion of the fatal injuries to Porter, were engaged in interstate commerce.

2. That any rights of claimant are exclusively regulated by the Federal Employers' Liability Act. (Transcript, pp. 15-16.)

The Commission, however, made its "decision and award" (Transcript, p. 17), as the statute designates the determination of the Commission, and granted to claimant compensation for her own benefit and for the benefit of decedent's children, until the children successively attain the age of eighteen years. (Transcript, p. 18.) To the decision and award of the Commission, as well as to the refusal of the Commission to make findings in accordance with the railroad's requests, the railroad filed exceptions. (Transcript, pp. 19-20.)

On appeal taken by the railroad company to the Appellate Division of the Supreme Court, Third Judicial Department, the court (172 App. Div. 918) unanimously affirmed the award of the Commission. (Transcript, pp. 23, 29.) Applications to the Appellate Division and to a Judge of the Court of Appeals, under the New York statute regulating appeals from an unanimous affirmance by the Appellate Division to the Court of Appeals, having been made and successively denied (Transcript, pp. 23, 29), the judgment of the Appellate Division, entered January 18, 1916, became a final determination in the highest court of the State of New York in which a decision could be obtained with respect to the Federal questions raised by the railroad company. (Transcript, p. 29.)

Kanawha Ry. v. Kerse, 239 U. S. 576, 578.

To the Appellate Division, therefore, plaintiff-in-error, as successor in title and interest to The New York Central and Hudson River Railroad Company, prosecuted a writ of error from this court within the time limited by the last sentence

of section 7 of the Act of Congress, approved September 6, 1916, which amended section 237 of the Judicial Code. (Transcript, pp. 32-33.)

Specification of Errors.

Plaintiff-in-error contends:

1. That the Appellate Division and the Workmen's Compensation Commission erred in holding that Lewis M. Porter, when he sustained his fatal injuries, was not employed by the railroad in interstate commerce.

2. That the Appellate Division and the Workmen's Compensation Commission erred in not holding that the liability, if any, of the railroad for Porter's death is defined and limited exclusively by the provisions of the Federal Employers' Liability Act.

Argument.

Statement of Facts.

At about 10.45 o'clock in the forenoon of December 17, 1914, while employed as a section hand by the railroad, Porter was instantly killed. (Transcript, pp. 2, 4-5, 8, 10-11, 12, 18.)

Porter's general duties consisted, among other things, in keeping the railroad right of way free from debris and obstructions. (Transcript, p. 13.)

When Porter sustained his fatal injuries he was shoveling snow from a space close to the railroad's main track, between the westerly rail and a milk platform, on the Ontario Division of the railroad at Camden, N. Y. (Transcript, pp. 2, 5, 8, 12, 13.)

While thus engaged, Porter was struck by a passenger train bound north on the main track along which he was at work. (Transcript, pp. 2, 5, 8, 9-10, 12, 18.)

Over the main track, along which Porter was working, the railroad was accustomed to operate trains, carrying passengers and freight, in transit in interstate, as well as intrastate, commerce (Transcript, pp. 14, 18.)

POINT I.

The Commission was without power to make the award under review.

1. *Porter, when killed, was employed in interstate commerce by the railroad, which also was then engaging in interstate commerce.*

Such is the settled rule under familiar decisions of this court in cases where workmen have been employed in the maintenance of interstate tracks in proper condition.

> Pedersen v. D., L. & W. R. R. Co., 229 U. S. 146, 152.
>
> Southern Ry. Co. v. Puckett, 244 U. S. 571, 573.

That rule has been specifically applied to cases where section hands have been injured while clearing snow from interstate tracks.

> Hardwick v. Wabash Ry. Co., 181 Mo. App. 156.
>
> Zitnik v. Union Pac. R. R. Co., 95 Nebr. 152 (Writ of error dismissed, 239 U. S. 650).

The Commission's Conclusion of Fact No. 4 to the contrary (Transcript, p. 18), which the Appellate Division has affirmed, with resultant denial of

an asserted Federal right, this court will review, since there is no evidence to support it.

Creswill v. Knights of Pythias, 225 U. S. 246, 261.

2. *Hence, the Federal Employers' Liability Act alone determines the railroad's liability for Porter's death.*

So this court has held in controlling decisions rendered since the writ of error was granted in this case.

N. Y. C. R. R. Co. v. Winfield, 244 U. S. 147.

Erie R R. Co. v. Winfield, 244 U. S. 170.

POINT II.

The judgment of the Appellate Division should be reversed, and this cause should be remanded for further proceedings not inconsistent with the decision of this court.

All of which is respectfully submitted.

Dated, November 20, 1918.

ROBERT E. WHALEN,
Of Counsel for Plaintiff-in-Error.

DEC 3 1918
JAMES D. MAHER,
CLERK

Supreme Court of the United States

THE NEW YORK CENTRAL RAILROAD COMPANY,
Plaintiff-in-error,

against

ANNA C. PORTER, for herself and her four minor children, MARGARET PORTER, PARK PORTER, ADELE PORTER and CLARISSE PORTER, et al.,
Defendants-in-error.

No. 134

BRIEF FOR STATE INDUSTRIAL COMMISSION

IN ERROR TO THE SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT, OF THE STATE OF NEW YORK.

MERTON E. LEWIS,
Attorney-General,
E. CLARENCE AIKEN,
OF COUNSEL FOR STATE INDUSTRIAL COMMISSION,
Albany, N. Y.

SUPREME COURT OF THE UNITED STATES

THE NEW YORK CENTRAL RAILROAD COMPANY,
Plaintiff-in-error,

against

ANNA C. PORTER, for Herself and Her Four Minor Children, MARGARET PORTER, PARK PORTER, ADELE PORTER, and CLARISSE PORTER, et al,
Defendants-in-error.

BRIEF FOR STATE INDUSTRIAL COMMISSION

In error to the Supreme Court, Appellate Division, Third Judicial Department, of the State of New York.

ARGUMENT FOR THE STATE INDUSTRIAL COMMISSION

It appears that the deceased employee at the time of the accident "was shoveling snow from a space between the track and a milk platform at the southerly side of the Mexico Street crossing on the Ontario Division of said railroad company in the village of Camden, N. Y., and was struck by passenger train No. 49, north bound" (fols. 7, 12, 18, 20), and this was found by the Workmen's Compensation Commission (fol. 28). Said Workmen's Compensation Commission also found that Lewis M. Porter, deceased, was not employed in interstate commerce at the time of the accident.

The deceased employee was not occupied in the maintenance of interstate tracks at the time of the accident as was held by this court in *Pederson* v. *D. L. & W. R. R. Co.*, 229 U. S. 146. Any work which has to do with the repair of ties, rails, ballast, tracks or bridges is so connected with interstate commerce as to make it difficult to disengage the work from that of intrastate character. Snow is, however of an evanescent nature — it comes and goes and leaves no trace.

This case, therefore, falls within that class of cases which have to do with the operation of the road rather than its maintenance (*Minneapolis & St. Louis R. R. Co.* v. *Winters*, 242 U. S. 353). It will be noticed that the employee was not shoveling snow from between the tracks or clearing ice or snow from the switches, which was the case in the two cases cited by the plaintiff-in-error (*Hardwick* v. *Wabash Ry. Co.*, 181 Mo. App. 156; *Zitnik* v. *Union Pac. R. R. Co.*, 95 Nebr. 152 (Writ of Error dismissed, 239 U. S. 650). As he was shoveling the snow from a space by the milk platform on the southern side of Mexico Street in the village of Camden, it would appear that he was clearing the snow from the street, rather in pursuance of a municipal duty than with reference to the commerce, interstate or intrastate, of the railroad. He was struck by a train, which does not appear to have been an interstate train but rather a local passenger train, and, although one of the employees of the plaintiff-in-error makes affidavit that another train No. 32 contained interstate cars and passed over the tracks that day, it does not appear when it passed through Camden or that the shoveling of snow had any reference to it.

The Workmen's Compensation Commission, therefore, had a right to draw the inference from such evidence as was before it that what the deceased employee was doing was not of an interstate character.

This case, therefore, falls within the principle enunciated by this court in *Erie Railroad Co.* v. *Welsh*, 242 U. S. 303, 306, in that it "involves simply an appreciation of the testimony and admissible inferences therefrom in order to determine whether there was a question to be submitted to the jury as to the fact of employment in interstate commerce. The state courts held there was no such question, and we cannot say that in so concluding they committed manifest error. It results that in the proper exercise of the jurisdiction of this court in cases of this character, the decision ought not to be disturbed (*Great Northern Ry. Co.* v. *Knapp*, 240 U. S. 464, 466)".

THE ORDER OF THE APPELLATE DIVISION OF THE SUPREME COURT SHOULD THEREFORE BE AFFIRMED.

Respectfully submitted,

MERTON E. LEWIS,
Attorney-General
Attorney for State Industrial Commission
Capitol, Albany, N. Y.

E. CLARENCE AIKEN,
Deputy Attorney-General,
Of Counsel.

-23-

FILED
JAN 22 1919
JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES

October Term, 1918.

No. 134.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Plaintiff-in-error,

vs.

ANNA C. PORTER, for herself and her four minor children, Margaret Porter, Park Porter, Adele Porter and Clarissa Porter, et. al.,
Defendants-in-error.

BRIEF FOR DEFENDANTS-IN-ERROR.

In error to the Appellate Division of the Supreme Court of the State of New York, Third Department.

ALBERT T. WILKINSON, Camden, N. Y.,
Of Counsel for Defendants-in-Error

Supreme Court of the United States

THE NEW YORK CENTRAL RAILROAD COMPANY,

Plaintiff-in-error,

against

ANNA C. PORTER, for herself and her four minor children, Margaret Porter, Park Porter, Adele Porter and Clarissa Porter, et al.,

Defendants-in-error.

BRIEF FOR DEFENDANTS-IN-ERROR.

Statement of the Case.

Lewis M. Porter was a section hand employed by the New York Central Railroad Company at Camden, N. Y. On December 17, 1914, while engaged in the performance of his duties, he was struck by the engine of a local passenger train and instantly killed. (Transcript, pp. 2, 5, 8, 12).

There is no claim or evidence that his death was caused by the negligence of the railroad company, or any of its employees.

An award of compensation has been made by the Workmen's Compensation Commission of the State of New York to the widow and four minor children of the decedent, under chapter 67 of the Consolidated Laws of New York, known as the Workmen's Compensation Law. (Transcript pp. 17 and 18).

The Commission found as one of the facts upon which it based its decision that the said "Lewis M. Porter, deceased, was not employed in interstate commerce at the time of the accident." (Transcript, p. 18). This finding of fact has been unanimously affirmed by the Appellate Division of the Supreme Court of New York. (Transcript pp. 22-23). The railroad company contends that he was so employed, and this is the ground of this appeal.

The plaintiff-in-error was engaged in interstate commerce and its tracks at the place where the accident occurred were used for the passage of trains carrying both interstate and intrastate passengers and freight. The evidence as to exactly what the decedent was doing when he was killed is as follows: "He was shoveling snow from a space between the track and a milk platform at the south side of the Mexico Street crossing of the Ontario Division of said railroad in the village of Camden, N. Y.," (Affidavit of Fred J. Hoffman, Section Foreman of Plaintiff-in-error, and the decedent's immediate superior, Transcript p. 5) "Where was he when he met with the injury? Between the westerly rail of the R. R. track and a milk platform on the south side of Mexico Street crossing Camden, N. Y. What was he doing at the time?

Shoveling snow out of the space between the track and said milk platform." (Affidavit of Charles H. Sweatland, Transcript p. 8). **"Was shoveling snow at crossing** and failed to clear engine between milk platform and main track." (Employer's first report of injury, Transcript, p. 12). "Was engaged in shoveling snow from railroad right of way close to west side of main track" (Employer's affidavit of Fred J. Hoffman, Transcript, p. 13).

ARGUMENT.

POINT I.

There was sufficient evidence to support the finding of the Commission that Porter was not employed in interstate commerce, and said findings having been unanimously affirmed by the Appellate Division, will not be disturbed by this Court.

N. Y. Central etc. R. R. Co. v. Tonsellito, 244 U. S., 360.

This case is not like the cases of Hardwick v. Wabash Ry Co., 181 Mo. App. 156, and Zitnik v. Union Pac. R. R. Co., 95 Neb. 152, in both of which the injured employee was removing snow from the switches and switch connections, to keep the tracks clear for the passage of trains carrying interstate commerce, or like the case of N. Y. C. R. R. Co. v. Winfield, 244 U. S. 147, where the work of the employee was directly concerned with keeping the track in repair.

The work which Porter was doing had nothing to do with keeping the track in repair, or even with keeping it clear from snow. He was in the street, outside the track, and between the track and a milk platform, shoveling the snow out of that space, presumably to make a passage way for men and teams in handling milk. There is no evidence that any of the milk shipped from that platform was going out of the state. The work which he was doing was purely local, and had nothing to do with the operation of trains or keeping the instrumentalities of such operation in repair.

Applying the well settled test, "Was the employee at the time of the injury engaged in interstate transportation or in work so closely related to it as to be practically a part of it, (Shanks v. D. L. & W. R. R. Co., 239 U. S. 558), we conclude, as did the State Courts, that he was not.

This case is similar to the cases of C. B. & Q. R. R. Co. v. Harrington, 241 U. S. 177, N. Y. C. R. R. Co v. White, 243 U. S. 190, Kelly v. Penn. R. R. Co., 151 C. C. A., 171, and Galveston H. & S. A. Ry. Co. v. Chojnacky, 163 S. W. Rep. 1011, in all of which the work had to do with some local structure or activity of the railroad company and not directly with commerce, either interstate or intrastate, and in all of which, the courts held that the injured employee was not employed in interstate commerce.

The fact that Porter's general duties may have been to some extent connected with interstate commerce is of no importance. The only question is, what was he doing at the exact time when he was killed.

Ill. Cent. R. R. v. Behrens, 233 U. S. 473, 478.

POINT II.

The order of the Appellate Division of the Supreme Court of the State of New York affirming the award of the Workmen's Compensation Commission should be affirmed.

Respectfully submitted.

ALBERT T. WILKINSON,

of Counsel for

Defendants-in-error.

OPINION

NEW YORK CENTRAL RAILROAD COMPANY, SUCCESSOR OF THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, *v.* PORTER, FOR HERSELF AND FOR HER FOUR MINOR CHILDREN, ETC., ET AL.

ERROR TO THE SUPREME COURT, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT, OF THE STATE OF NEW YORK.

No. 134. Submitted January 10, 1919.—Decided March 3, 1919.

An employee of a railroad company killed by a train while removing snow on its premises from a space between a platform and a track used in interstate as well as intrastate commerce, *held* employed in interstate commerce; the resulting rights and liabilities were determinable by the Federal Employers' Liability Act and the State Workmen's Compensation Law was inapplicable.

172 App. Div. 918, reversed.

THE case is stated in the opinion.

Mr. Robert E. Whalen for plaintiff in error.

Mr. Merton E. Lewis, Attorney General of the State of New York, and *Mr. E. Clarence Aiken* for defendants in error. *Mr. Albert T. Wilkinson*, for defendants in error, in a separate brief.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

Lewis M. Porter, a section-man, was struck and instantly killed by plaintiff in error's engine attached to a passenger train and moving along the main track. The Appellate Division affirmed an award in behalf of his

widow and children under the New York Workmen's Compensation Law.

If the deceased was employed in interstate commerce when the accident occurred, consequent rights and liabilities arose under the Federal Employers' Liability Act and the state statute did not apply. *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147; *Erie R. R. Co.* v. *Winfield*, 244 U. S. 170.

The evidence showed and the State Workmen's Compensation Commission found: "Lewis M. Porter resided at Camden, N. Y., and upon the date of the accident, December 17, 1914, was in the employ of The New York Central Railroad Company as a laborer. On said date, while engaged in shoveling snow upon the premises of The New York Central Railroad Company between the west bound track and a platform near the intersection of said tracks and Mexico Street in the Village of Camden, he was struck by the engine of a passenger train known as train No. 49, which was proceeding northerly on the west bound track, receiving injuries from which he died immediately. The tracks of The New York Central Railroad Company at the point where the deceased was working, were used for the purpose of transporting both interstate and intrastate cars and both interstate and intrastate commerce."

Considered in connection with our opinions in *Pedersen* v. *Delaware, Lackawanna & Western R. R. Co.*, 229 U. S. 146; *Southern Ry. Co.* v. *Puckett*, 244 U. S. 571, and cases there cited, we think the circumstances here presented make it quite clear that when killed Porter was employed in interstate commerce. Accordingly, the judgment below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

MR. JUSTICE CLARKE dissents.